

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MARK PHILLIPS, Register No. 282013,)	
DAVID MC CLAIN,)	
ANSUR P. ADAMS, Register No. 83865,)	
)	
Plaintiffs,)	
)	
v.)	No. 08-4253-CV-C-NKL
)	
BOONE COUNTY JAIL, et al.,)	
)	
Defendants.)	

ORDER

On January 13, 2009, United States Magistrate Judge William A. Knox recommended dismissing plaintiffs' claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including plaintiff Phillips' motion to amend which seeks to add a legal cause of action under the Religious Freedom and Restoration Act (RFRA). The issues were adequately addressed in the report and recommendation.

Although Muslim inmates have the right to avoid contact with pork or any food that has been contaminated with pork, Hayes v. Long, 72 F.3d 70, 74 (8th Cir. 1995), plaintiffs' claims of a one-time incident of receiving a meal with pork cannot be said to substantially burden their exercise of religion. Further, the grievance documents submitted with the complaint clearly indicate this was a one-time incident, was accidental, and defendants offered their apologies. To the extent plaintiff Phillips alleges he was disciplined for refusing the pork tray, the grievance documents show he was not disciplined for refusing a food tray with pork on it, but was disciplined for his behavior regarding the incident, and was cited for creating a disturbance.

Plaintiffs' allegations cannot support a claim under the First Amendment or under RFRA (replaced by Congress with RLUIPA¹).

The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that plaintiff Phillips' motion to amend is granted.

[12] It is further

ORDERED that the Report and Recommendation of January 13, 2009, is adopted. [8] It is further

ORDERED that plaintiffs' claims are dismissed, pursuant to 28 U.S.C. § 1915A, for failure to state a claim for which relief can be granted. It is further

ORDERED that plaintiffs' motions to stay and for appointment of counsel are denied. [11, 13]

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: March 10, 2009
Jefferson City, Missouri

¹RFRA was invalidated as applied to the states in City of Boerne v. Flores, 521 U.S. 507, 515-16 (1997). In response, Congress enacted RLUIPA.